

## Office Action Summary

Application No.

10/088,037

Applicant(s)

MORIMOTO ET AL.

Examiner

HELEN SHIBRU

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2621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5,7,9-21,23-26,33 and 34 is/are pending in the application.
- 4a) Of the above claim(s) 2-5,7,14,15,19-21,23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,9-11,16-18,25,26,33 and 34 is/are rejected.
- 7) ☒ Claim(s) 12 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>08/09/2009</u> .                         |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application  |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____.                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/04/2009 has been entered.

### ***Response to Amendment***

2. The amendments filed on 08/04/2009 have been entered and made of record. Claims 1-5, 7, 9-21, 23-26, 33-34 are pending, claims 1, 9-11, 16-18, 25-26, and 33-34 are rejected, claims 12-13 objected, claims 2-5, 7, 14-15, 19-21, and 23-24 are withdrawn, and claims 6, 8, 22, 27-32 are cancelled.

### ***Response to Arguments***

Applicant's arguments filed 08/04/2009 have been fully considered but they are not persuasive. See below.

Applicant states, "Inzumi's bit rate of the received bit stream is not based on the counted number of packets."

In regard the Examiner respectfully disagrees. Inzumi teaches the frequency divider generates an internal clock signal which becomes the basis of a bit rate R, and this internal frequency is supplied to the PCR generating section. The packet counter 16 counts the number of packets and supplied to the PCR as well. The PCR, which receives signals from units 25, 16, and 29, calculates new PCR values using the following equation

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$T = (N * L/R) + T_0$  where R is the recording bit rate, N is the number of Packets. The recording bit rate R is equal to  $L / (T - T_0)$ . Therefore calculating bit rate based on the number of packets is thought by Inzumi.

Applicant states “claim 1 is different than the art of record, because the data rate R is detected based on counting the number of packets at intervals of a predetermined time....”

In response the Examiner respectfully disagrees. The term “predetermined time interval” is broad and therefore reasonable interpretation is given to it. Inzumi teaches recording program data with predetermined bit rate (see col. 3 lines 51-65). Inzumi further teaches the PCR is inserted with the TS data at a predetermined interval by the transmitter (see col. 6 lines 42-45). Therefore the applied prior art indeed teaches, in addition to the response above, counting the number of packets at intervals of a predetermined time.

Therefore the applied prior art teaches the limitations of the present application for at least the reasons stated above and the Office Action stated below.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 9-11, 16-18, 25-26, and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsumi (US Pat. No. 6,038,094) in view of Shinohara (US Pat. No. 5,740,306) and further in view of Inazumi (US Pat. No. 6,493,362).

Regarding claim 1, Matsumi discloses a data recording apparatus comprising: inputting means of receiving a data (see abstract and fig. 1);

data converting means of converting the data which is received by said inputting means, into a recording signal (see col. 8 lines 44-52);

recording means of recording the recording signal which is converted by said data converting means, on a predetermined recording medium (see abstract, col. 10 lines 20-40 and lines 55-67);

data rate detecting means of detecting a rate of the data which is received by said inputting means (see claim 1 lines 16-20); and

controlling means of controlling a recording rate of said recording means based on the detected data rate (see claim 2, col. 10 lines 2-19, col. 16 lines 23-50).

Claim 1 differs from Matsumi in that the claim further requires data rate detecting means of detecting a data rate of the received bit stream by counting input packets received by said inputting means.

In the same field of endeavor Shinohara discloses the rate identifying circuit extracts transport packets of the program to be recorded from the transport packets received through the input terminal (col. 40 lines 19-31). Shinohara further discloses the identifying circuit detects rates of respective data. Special playback data recording area can be used effectively and the playback data rate for the fast playback can be maximized (col. 56 lines 23-55). Shinohara further discloses  $n$  lines of sync block data may be generated using  $m$  transport packets where  $m$  and  $n$  are positive numbers (see col. 54 lines 60-67). Shinohara further discloses the group of sync block formats can be separated from each other by using sync block number (col. 34 lines

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19-42). Therefore in light of the teaching in Shinohara it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Matsumi by counting input packets in order to monitor a packet flow.

Claim 1 further differs from the Matsumi and Shinohara in that the claim further requires detecting data rate by counting a number of packets at intervals of a predetermined time period, the predetermined time period being a time period taken by the said recording means to record data on said predetermined recording medium in a predetermined format.

In the same field of endeavor Inazumi discloses detecting data rate by counting a number of packets at intervals of a predetermined time period, the predetermined time period being a time period taken by the said recording means to record data on said predetermined recording medium in a predetermined format (see figure 3, col. 3 lines 52-37, and col. 7 line 61-col. 8 line 3, col. 9 line 35-col. 10 line 58, col. 11 line 33-45, and claim 1). Therefore in light of the teaching in Inazumi it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above proposed combination by counting packets in a predetermined time and record data in the predetermined time in order to produce the recorded data with high precision.

Regarding claim 9, Shinohara discloses the said controlling means compares a predetermined reference value with the data rate which is detected by said data rate detecting means, to control the recording rate of said recording means (see col. 56 line 61-col. 57 line 14).

Regarding claim 10, Shinohara discloses the predetermined reference value is a value which is determined in accordance with a rate of a head data of the recording signal which is to

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be recorded by said recording means, in each recording time period (see col. 17 line 66-col. 18 line 21).

Regarding claim 11, Shinohara discloses there are at least two kinds of recording modes in which said recording means records the recording signal, and at intervals of a predetermined time period, when a rate of a data corresponding to the recording signal which is to be recorded by said recording means exceeds even once the predetermined reference value, said controlling means controls the recording rate of said recording means so that all recording signals during the predetermined time period are recorded in a recording mode in which a data of a rate exceeding the predetermined reference value can be recorded (see col. 13 lines 21-36, col. 17 lines 54-65 and col. 30 line 63-col. 31 line 14).

Regarding claim 16, Shinohara discloses recording means records also the recording rate on the recording medium (see abstract and claim 1 in Shinohara).

Regarding claim 17, Shinohara discloses A data reproducing apparatus comprising at least reproducing means of, by using the recording rate which is recorded on the recording medium by a data recording apparatus according to claim 16, reproducing the recording signal which is recorded on the recording medium (see abstract and cols. 2-3).

Claim 18 is rejected for the same reason as discussed in claim 1 above.

Claims 25-26 are rejected for the same reasons as discussed in claims 16-17 above respectively.

Claims 33-34 are rejected for the same reasons as discussed in claims 1 and 3 above.

***Allowable Subject Matter***

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5. Claims 12-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HELEN SHIBRU whose telephone number is (571)272-7329. The examiner can normally be reached on M-F, 8:30AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THAI Q. TRAN can be reached on (571) 272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 2621  
October 09, 2009

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Supervisory Patent Examiner, Art Unit 2621